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SUPREME COURT, U.S.

Vol. IX

TRANSCRIPT OF RECORD

(Pages 3781 to 4122)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 228

NYE & NISSEN (A CORPORATION), AND ABRAHAM MONCHARSH, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 17, 1948.

CERTIORARI GRANTED OCTOBER 25, 1948.

No. 11308

United States

Circuit Court of Appeals

For the Ninth Circuit.

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Ten Volumes

VOLUME IX

Pages 3781 to 4122

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 661 Howard Street, San Francisco

(Testimony of Gordon C. Reid.)

A. Two hundred and fifty cases.

Q. How did the cases of eggs, 250 in number, grade as to quality?

A. U. S. Grade AA Medium.

Q. And where did the inspection take place?

A. At Nye & Nissen.

Q. At 1301 Seventeenth Street?

A. That is right.

The Court: Q. What is the date?

The Witness: A. May 5, 1944.

Mr. Faulkner: I offer that certificate in evidence, if the Court please.

(The document was thereupon received in evidence and marked Defendants' DP.)

Mr. Faulkner: I ask you if that is an original egg grading certificate issued by the Department of Agriculture? A. That is right.

Q. Did you make this inspection covered by that certificate? A. I did.

Q. And where did you make it?

A. At Nye & Nissen's. [3511]

Q. 1301 Seventeenth Street? A. Yes, sir.

Q. What quantity of eggs is covered by that certificate?

A. One hundred and thirty-seven cases.

Q. And what was the quality that you graded those 137 cases? A. U. S. Grade AA Medium.

Q. And the date of that certificate?

A. May 15, 1944.

Mr. Faulkner: I offer that certificate in evidence.

(Testimony of Gordon C. Reid.)

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit DQ.)

Mr. Faulkner: Q. With respect to the quality of eggs covered by that certificate, is there any question but that you affixed the Department of Agriculture stamp showing U. S. Grade AA on those eggs? A. I did.

Q. Is that right? A. That is right.

Q. Can you state, Mr. Reid, from your own recollection at this time, or from any record which you have with you, which of the eggs covered in the certificates you sent to the shipping companies were eggs which were specially inspected for the purpose of making the certificate or came out of the stockpile of eggs represented in the inspections made between April 18 and May 15?

A. I couldn't tell which ones.

Q. But you know, do you not, Mr. Reid, that during that period you inspected eggs for a stockpile and you inspected eggs and issued certificates to the shipping companies? [3512]

A. We inspected eggs at the request of the applicants. The disposition of all of them was unknown to us at the time—to me at the time.

Q. You mean what happened to them after you inspected them?

A. Well, whether they were all going to be used for War Shipping boats or whether they were going to be placed in storage or what was going to

(Testimony of Gordon C. Reid.)

happen to them, we did not know at the time, or I did not know at the time.

Q. But there were certain inspections that you made of particular quantities that were covered by a certificate that went to the ships?

A. That is right.

Mr. Faulkner: To clarify this, your Honor, a moment ago when I had two certificates here, one a counterpart of the other, I intended to offer in evidence——

The Court: One of them was in evidence and you discovered you had a duplicate.

Mr. Faulkner: No, they were for identification. Two of them were for identification, and we had four of them, and I intended to offer one of each, and so the record may be clear, may XY-1 be deemed in evidence——

The Court: That is my memory, that they were in for identification. What do the records disclose?

Mr. Faulkner: Mr. Welsh gave me this note, or Mr. Sullivan. We want to clear it up, if the Court please. Y-1 will be in evidence and X will remain for identification. And X-1 will be [3513] in evidence and DJ will remain for identification.

At this time, if the Court please, I would like to exhibit to the Jury the certificates issued by the Department of Agriculture, Defendants' Exhibits DK, DL, DM, DN, DO, DP and DQ, which are certificates of inspection of the so-called stockpile eggs inspected between April 18 and May 15 of